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AGENDA ITEM
For Meeting of: 10-08-09

October 1, 2009

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*
Attorney

Subject: Draft AO 2009-22 (Democratic Senatorial Campaign Committee)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 8, 2009.

Attachment

1 ADVISORY OPINION 2009-22

2
3 Marc E. Elias, Esq.
4 Rebecca H. Gordon, Esq.
5 Perkins Coie
6 607 Fourteenth Street NW
7 Washington, DC 20005-2003
8

9 Dear Mr. Elias and Ms. Gordon:

10
11 We are responding to your request for an advisory opinion on behalf of the
12 Democratic Senatorial Campaign Committee (“Committee”), concerning the application
13 of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
14 regulations to the Committee’s plan to report, on a quarterly basis rather than monthly,
15 information about lobbyists/registrants and lobbyist/registrant PACs that bundle
16 contributions.

17 The Commission concludes that if the Committee files its Reports of
18 Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs
19 (“Lobbyist Bundling Reports”) on a quarterly basis instead of monthly, the applicable
20 “covered periods” for these Lobbyist Bundling Reports in election years would be semi-
21 annually, quarterly, and the applicable pre- and post-election reporting periods. In non-
22 election years, the Committee need observe only the semi-annual covered periods
23 beginning on January 1 and July 1.

24 **Background**

25 The facts presented in this advisory opinion are based on your letter received on
26 August 10, 2009.

27 The Committee is a national political party committee registered with the
28 Commission. As such, the Committee files its campaign finance reports monthly in

accordance with 2 U.S.C. 434(a)(4)(B) and 11 CFR 104.5(c)(4), and its Lobbyist Bundling Reports monthly, as well, under 2 U.S.C. 434(i)(2)(C) and 11 CFR 104.22(a)(5)(iii). The Committee would like to elect to file its Lobbyist Bundling Reports on a quarterly basis instead of monthly.

Question Presented

What is the “covered period” under 11 CFR 104.22(a)(5)(ii) and (iv) if the Committee chooses to file its Lobbyist Bundling Reports on a quarterly basis instead of monthly?

Legal Analysis and Conclusions

Even though the Committee is a monthly filer, if it elects to file its Lobbyist Bundling Reports on a quarterly basis, then the applicable “covered periods” for Lobbyist Bundling Reports would be (1) semi-annually in each non-election year; and (2) semi-annually, quarterly, and pre- and post-election reporting periods in election years.

The Act and Commission regulations require certain political committees (“reporting committees”)¹ to disclose information about any lobbyist/registrant and lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of a certain amount within a specific period of time (“covered period”). 2 U.S.C. 434(i); 11 CFR 104.22. The covered periods for Lobbyist Bundling Reports generally correspond to the reporting periods for the reporting committee’s regular campaign finance reports under 2 U.S.C. 434 and 11 CFR 104.5. There are additional semi-annual covered periods for all reporting committees. However, a reporting committee that files campaign finance reports monthly “may choose to file

¹ “Reporting committees” means political party committees, political committees authorized by candidates, and leadership PACs. 11 CFR 104.22(a)(1).

1 [its Lobbyist Bundling Reports] pursuant to the quarterly covered period . . . instead of
2 the monthly covered period”² 11 CFR 104.22(a)(5)(iv).

3 A reporting committee required to file its campaign finance reports quarterly
4 under 2 U.S.C. 434 and 11 CFR 104.5 must file its Lobbyist Bundling Reports for the
5 “quarters beginning January 1, April 1, July 1 and October 1 of each calendar year and
6 the applicable pre- and post-election reporting periods in election years; in a nonelection
7 year, reporting committees not authorized by a candidate need only observe the semi-
8 annual” reporting period. 11 CFR 104.22(a)(5)(ii). This schedule applies both to
9 reporting committees that file campaign finance reports quarterly and to those that file
10 campaign finance reports monthly but that choose to file Lobbyist Bundling Reports on a
11 quarterly basis instead. *See* 11 CFR 104.22(a)(5)(iv); *see also* Explanation and
12 Justification, Reporting Contributions Bundled by Lobbyists, Registrants and the PACs
13 of Lobbyists and Registrants, 74 Fed. Reg. 7285, 7291 (Feb. 17, 2009) (any monthly filer
14 that elects to file quarterly “must follow the same schedule as quarterly filers . . .”).

15 Thus, as an unauthorized political committee that elects to file its Lobbyist
16 Bundling Report on a quarterly basis, the Committee must file these reports on the same
17 schedule as an unauthorized political committee that files all of its campaign finance
18 reports quarterly under 11 CFR 104.5: that is, in election years, semi-annually, quarterly,
19 and the applicable pre- and post-election reporting periods. In non-election years, the
20 Committee need observe only the semi-annual covered periods beginning on January 1
21 and July 1. The Committee must also file Lobbyist Bundling Reports for any special

² A reporting committee must notify the Commission in writing when it files its monthly Lobbyist Bundling Report of its intention to exercise the quarterly filing option. The reporting committee must then file its next report under the new filing frequency. The reporting committee may change its filing frequency no more than once per calendar year. 11 CFR 104.22(a)(5)(iv).

election covered periods in which it receives bundled contributions above the threshold amount from lobbyists/registrants and lobbyist/registrant PACs. *See* 11 CFR 104.22(a)(5)(v).

Additionally, the Committee must continue to file its monthly campaign finance reports under 2 U.S.C. 434(a)(4)(B) and 11 CFR 104.5(c)(3).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

On behalf of the Commission,

Steven T. Walther
Chairman